



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/812,148

03/29/2004

Gary W. James

METZ 2 00011

2979

27885

7590

04/13/2009

Fay Sharpe LLP

1228 Euclid Avenue, 5th Floor

The Halle Building

Cleveland, OH 44115

EXAMINER

ING, MATTHEW W

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

04/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/812,148	Applicant(s) JAMES ET AL.	
	Examiner MATTHEW W. ING	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,9 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,9 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the receipt of "the rounded edges of the dimple of the third support member on the third side wall" by the "plurality of circular openings formed in said flanges located at said second ends of said first side wall and said second side wall...when the flange of one of the first and second side walls is received between the second leg of the third support member and the third wall" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 5-6, 9 & 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, the arrangement described in the limitation, "wherein one of said plurality of circular openings formed in said flanges located at said second ends of said first side wall and said second side wall receives the rounded edges of the dimple of the third support member on the third side wall when the flange of one of the first and second side walls is received between the second leg of the third support member and the third wall", is not shown in the drawings nor mentioned anywhere in the written description as originally filed. Although openings 100 are shown in the drawings, the written description is silent regarding the purpose of said openings. Nor does the written description anywhere discuss the type of connection between the first, second, & third side walls. As such, the aforementioned limitation is considered new matter.

Claim Rejections—35 USC § 103

4. Claims 1, 6, 9 and 14–16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (3,168,365) in view of Snoke (6,152,552), Gutner (4,189,796), Vargo (4,553,725), & Znamirovski (4,288,132).

Art Unit: 3637

5. Evans teach(es) the structure substantially as claimed, including a cabinet (10, 10') with opposite first (12) and second (13) side walls interconnected by a rear third wall (11, 11'); a base wall (not shown but considered to be inherent in a cabinet structure); a removable shelf (20) with a planar surface (25); and aligned support members (17') punched out of and extending from the rear third wall such that openings are formed adjacent thereto (see Fig. 12; col. 3, lines 24–30), the support members including first legs extending perpendicular to the wall and second legs extending perpendicular to the first legs and spaced parallel to the wall; the flanges of the shelf being received between the walls of the cabinet and the legs of the support members to secure the shelf in place.

6. The only difference between Evans and the invention as claimed is that Evans fail(s) to teach an aligned first support member punched out of and extending from the first side wall of the cabinet; and support members with straight first and second legs, or hemispherical dimples received in openings in the shelf flanges; wherein the dimples each have rounded edges; and wherein said openings are each circular & extend completely through the flanges, and capable of receiving the rounded edges of a respective dimple; wherein a plurality of openings are formed in a flange located at a second end of each of the first & second side walls; and a third support member punched out of an extending from the third wall, said member having straight first & second legs and a dimple; wherein one of said plurality of circular openings formed in said flanges located at said second ends of said first & second walls receives the rounded edges of said dimple.

7. Snoke, however, teaches a cabinet (10) having wall components (26) forming a rear wall and opposing side walls (see Fig. 2; col. 3, lines 9–11); a base wall (28); and a removable shelf

Art Unit: 3637

(30) with a planar surface and flanges (76) with openings (40) therein; the side and rear walls of the cabinet having aligned support members (44) punched out and extending therefrom such that openings are formed adjacent thereto (see Figs. 15, 16); the flanges of the shelf being received between the walls of the cabinet and legs of the support members to secure the shelf in place.

8. Additionally, Gutner teaches a support structure (see Figs. 2–4) having an L-shaped support member (18) engaging a flange (13); the support member being punched out of and extending from a plate (14) such that an opening (19) is formed through the plate; the support member including a straight first leg perpendicular to the plate and a straight second leg perpendicular to the first leg and spaced parallel to the plate (see Fig. 4), the second leg including a substantially hemispherical dimple (20) extending towards the plate opening; and the flange including a circular opening (21) dimensioned to receive the support member dimple.

9. Additionally, Vargo teaches a hemispherical dimple (94) received in an opening (88) in a shelf flange (86); wherein the dimple has rounded edges (see Fig. 1); and wherein said opening is extends completely (Figs. 3-4) through the flange, and capable of receiving the rounded edges of a respective dimple (Figs. 3-4). Although the opening (88) of Vargo is not explicitly described as being "circular"; it is noted that Vargo additionally teaches circular openings (34). As such, to make the opening (88) of Vargo circular is viewed as being an obvious design consideration, depending on the desired needs of the person constructing the opening (e.g., intended use of the opening, aesthetic considerations, compactness, ease of manufacture, etc.).

10. Additionally, Znamirowski teaches connecting means comprising a plurality of openings are formed in a flange (45) located at a second end of each of the first & second side walls (Fig. 3), as well as a support member (54) received therein. It is additionally noted that the support

Art Unit: 3637

members of both Znamirovski, and of Evans as modified by Snoke, Gutner, & Vargo, are both equivalent alternative structures for connecting planar members to one another.

11. Whereas Evans thus teaches a cabinet upon which the claimed side wall support members can be seen as an improvement; and whereas Snoke teaches a comparable cabinet that was improved in the same way as claimed, *i.e.*, having support members punched out of both side and rear walls to support a shelf; it therefore would have been obvious to one of ordinary skill in the art to apply the known improvement of Snoke in the same way to a cabinet as taught by Evans in order to obtain the predictable result of a cabinet with support members punched out of the rear wall and the side walls; and whereas the flange & L-shaped support members of both Gutner & Evans are both equivalent alternative structures for accomplishing similar purposes, it therefore would have been obvious to one of ordinary skill in the art to substitute the known flange and dimpled L-shaped support member of Gutner for the flange and curved L-shaped support member of Evans, since the results of such a substitution would have been predictable; and whereas the dimple & opening of both Gutner & Vargo are both equivalent alternative structures for accomplishing similar purposes, it therefore would have been obvious to one of ordinary skill in the art to substitute the known dimple & opening of Vargo for each of the dimples & openings of Evans as modified by Snoke & Gutner, since the results of such a substitution would have been predictable; to substitute connecting means, as taught by Znamirovski, for the connections between the first, second, & third walls of Evans as modified, since the results of substituting one known connecting means for another would have been predictable; and to substitute support members, as taught by Evans as modified, for the support members between the first, second, & third walls thereof, since the results of substituting one known support member for another

Art Unit: 3637

would have been predictable; and in order to permit easier assembly & disassembly of said cabinet; thereby providing the structure substantially as claimed.

12. Regarding claims 6, 9 and 14, the support members of Evans and Gutner are considered lances, Evans teaches a cabinet fabricated from metal (col. 2, lines 11–13), and Evans further teaches a support wall (45) disposed between the first side wall and the second side wall in a first direction and between the removable shelf and the base wall in a second direction.

13. Regarding claims 15 and 16, Evans does not specify how the support wall is connected to the base wall and the removable shelf, stating only that its upper end “is adapted to engage against the underside of the shelf” (col. 3, lines 15–16). However, Evans teaches the use of support members (17, 17', 47) and flanges to secure different components (such as 20 and 48). It would have been obvious, to one of ordinary skill in the art at the time the invention was made, to modify the cabinet of Evans, already modified as above to include additional support members and dimples in the support members, by providing further support members in the base wall and removable shelf to connect the support wall thereto, as this would ease manufacture by allowing consistent use of such a connection throughout the cabinet.

14. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (3,168,365), Snoke (6,152,552), Gutner (4,189,796), Znamirovski (4,288,132), & Vargo (4,553,725) as applied to the claim(s) above, further in view of Young (3,677,202). Evans, Snoke, Gutner, Znamirovski & Vargo teach(es) the structure substantially as claimed, including a cabinet with support members. The only difference between Evans, Snoke, Gutner, Znamirovski & Vargo and the invention as claimed is that Evans, Snoke, Gutner, Znamirovski & Vargo fail(s) to teach rounded upper edges on the support members. Young, however, teaches a shelf support structure

Art Unit: 3637

(see Figs. 2, 4) having support members (25) punched out of and extending from walls (23), the support members having rounded upper edges (35; see Fig. 4) to ease assembly of the system (col. 2, lines 42–45). It would have been obvious to one of ordinary skill in the art to provide the support members of Evans as modified by Snoke, Gutner, Znamirowski & Vargo with rounded upper edges, as taught by Young, in order to facilitate assembly of the cabinet; and to reduce the probability of physical harm to a user via the elimination of sharp corners; thereby providing the structure substantially as claimed.

Response to Arguments

15. Applicant's arguments filed 3/24/09 have been fully considered but they are not persuasive.

16. Applicant's arguments with respect to claims 1, 5-6, 9 & 14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3637

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW W. ING whose telephone number is (571)272-6536. The examiner can normally be reached on Monday through Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWI

7 April 2009

/José V. Chen/

Primary Examiner, Art Unit 3637